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VIA EMAIL AND HAND-DELIVERY

Richard D. Mednick
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 10
1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

Re: Earle M. Jorgensen Company - Jorgensen Forge Early Action Area
Notice of Objection – Formal Dispute Resolution under Section XVI of November 2012 Administrative Settlement Agreement and Order on Consent

Dear Mr. Mednick:

Pursuant to Section XVI of the 2012 Administrative Settlement Agreement and Order on Consent for Removal Action Implementation, EPA Docket No. CERCLA-10-2013-0032 (Settlement Agreement), Earle M. Jorgensen Company (EMJ) hereby provides written notice that it disputes EPA's determination of non-compliance set forth in EPA's November 25, 2014 letter (EPA Letter). As EPA is aware, EMJ has invested considerable time and effort in close collaboration with EPA for over ten years to complete a Non-Time Critical Removal Action (NTCRA) of contaminated sediments and associated shoreline bank soils at the Jorgensen Forge Early Action Area located at the Lower Duwamish Waterway (LDW) Superfund Site. EMJ agreed to perform the NTCRA under the Settlement Agreement.

EMJ performed the NTCRA under close daily EPA oversight and in accordance with the EPA-approved Final Engineering Evaluation/Cost Analysis Report prepared by Anchor QEA dated October 2011 (EE/CA); Basis of Design Report prepared by Anchor QEA dated August 2013 (BODR); and the Removal Action Work Plan prepared by Anchor QEA dated May 2014 (RAWP). The EE/CA, BODR, and RAWP are all incorporated requirements of the Settlement Agreement.

The EPA Letter alleges, however, that EMJ is not in compliance with the excavation and dredging requirements described in EPA's September 30, 2011 Action Memorandum (Action Memorandum) and the Settlement Agreement. For several reasons, EMJ objects to EPA's position and accompanying statements made in the EPA Letter.

In the Action Memorandum, EPA selected Alternative 4 in the Final EE/CA. The goal of Alternative 4 was the complete removal of sediments exceeding the Removal Action Level (RvAL) for total polychlorinated biphenyls (PCB). Prior to and during development of the EE/CA in 2010 and 2011, EMJ and EPA agreed that the target removal depths under Alternative 4 would be based on extensive sediment data obtained and on existing high density subsurface cores. EMJ also collected additional subsurface cores at EPA's request in February 2011 to provide higher data density to design for complete removal. EPA approved the target removal elevations identified in the EE/CA and the subsequent associated three-dimensional dredge design presented in the BODR and RAWP (the EPA-approved Documents).

During the remedy development and evaluation process, EMJ agreed to perform dredging to the EPA-established target removal elevations in a single dredge pass (i.e., no immediate sampling analysis of the post-dredge surface and "real time" determination on whether to perform additional dredging based on the sampling results). EPA did not require immediate analysis of the post-dredge z-layer samples. Following EMJ's agreement to perform Alternative 4, EPA later added a requirement that z-layer sediment and shoreline bank sampling be performed. EMJ clearly communicated to EPA its concern that (1) residual total PCB sediment concentrations should be expected during an environmental dredge project[1] with such known, elevated concentrations of PCBs, (2) the required z-layer sampling would be biased by these residual sediment concentrations, and (3) no corrective actions should be required based on the identified concentrations.

Shawn Blocker, the EPA Remedial Project Manager at that time, acknowledged these concerns, indicating that the z-layer sampling would be primarily for information purposes only. Based on these communications with Shawn Blocker, EMJ understood that if the z-layer sediment concentrations were "significantly" elevated above the total PCB RvAL, EMJ would need to further evaluate the protectiveness of the completed remedy in cooperation with EPA. To define "significantly elevated," EPA required that EMJ insert text into the EE/CA clearly acknowledging that a layer of residual total PCB would likely remain on the top of the post-dredge surface and that EPA would only require an additional evaluation if the z-layer total PCB surface weighted average concentration within the Removal Action Boundary (RAB) was greater than 20 times the RvAL, or 240 milligrams per kilogram normalized for organic carbon. This performance standard was also included in the EPA-approved BODR including the Construction Quality Assurance Plan (CQAP; Appendix D), and RAWP. Indeed, the Statement of Work under the Settlement Agreement states expressly that the NTCRA's performance standard would be established in the CQAP.

EMJ relied on this residual management approach since it was adopted under these key EPA-approved Documents governing the NTCRA's implementation. In contrast to the assertions in the EPA Letter, EPA never indicated that any future evaluations or work would potentially be

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[1] *See, e.g.*, U.S. Army Corps of Engineers *The Four Rs of Environmental Dredging; Resuspension, Release, Residual, and Risk* dated January 2008.

required based on the concentrations of the shoreline bank z-layer samples unless the performance standard stated in the CQAP was not met.

EPA's requirement that the z-layer sediment sampling locations be co-located with the subsurface sediment cores showing the highest elevated total PCB elevations at depth clearly shows the following:

- A high bias for elevated total PCB residual concentrations within the RAB;
- The z-layer sediment samples collected at stations PDS-01 through PDS-06 were collected at elevations below the RvAL exceedances and associated EPA-approved dredge design surface. This confirms that the identified z-layer sediment concentrations are due to residuals, not missed RvAL exceedances inventory;
- Stations PDS-01, PDS-03, and PDS-05 are located beneath the shoreline bank toe berm so each of these locations was overlain by the shoreline containment materials (filter material, riprap, and habitat substrate) that included amendment with granular activated carbon. Shoreline bank sloughing during completion of dredging in these areas could have increased the residual concentrations; and
- Station PDS-4 is located directly along the federal navigation channel and was surrounded by steep slopes on three sides following dredging to the design elevations and side slope sloughing in these areas could have increased the residual concentrations.

EPA-required dredging BMPs in the EPA-approved Documents directly contradict EPA's current position that "...it is unclear to EPA why EMJ performed this backfill work prior to obtaining z-layer sample results which are essential to either affirming, or in our case disaffirming the completion of the excavation and dredging work." EMJ performed the NTCRA in accordance with dredging BMPs that EPA required be added into the EE/CA, BODR, and RAWP. These dredging BMPs mandated the backfill work and z-layer sampling be performed in the sequence they were in fact performed by EMJ. Specifically, the BMPs required that EMJ complete the dredging in a single dredge pass by performing bathymetric surveys in each dredge management unit (DMU) "and then as soon as practical within the operational efficiency of the project place of a minimum 3-inch to 6-inch thick lift of clean backfill material over the dredge subunit. Post-dredge surface samples may be collected before or after placement of the clean back fill material, as described in the CQAP (BODR; Appendix D). This BMP also allows the dredged area to be quickly covered, reducing the potential for ongoing resuspension and release from the loosened residual sediment."

There was also an extremely narrow construction window to implement the NTCRA to ensure that such implementation did not interfere with established tribal fishing rights. Specifically, in-water dredging of sediments could not commence until July 21, 2014 and completion of all in-water work including backfill was required by midnight on September 13, 2014 in order to accommodate the commencement of the tribal fishing season on September 14, 2014. EPA

representatives were also on-site daily to oversee the performance of the NTCRA to ensure compliance with the EPA-approved documents.

Further, EPA never commented or raised any concerns while on-site overseeing the work or during any meetings regarding the timing of backfill work and z-layer sampling nor did it provide any comments on the submitted weekly meeting notes. EPA and/or USACE personnel were on-site daily during construction to oversee remedy implementation through completion of the work, and coordinated daily with EMJ construction management personnel to evaluate whether the work was being performed in accordance with the EPA-approved Documents. This oversight included USACE personnel overseeing the z-layer sediment sample collection on the sampling vessel followed by immediate placement of backfill material.

The EMJ team also held weekly construction progress meetings with EPA and USACE oversight personnel describing the work completed to date and planned work, and meeting notes were distributed for EPA review and comment. These meetings clearly identified the timing for z-layer sample collection in all 5 DMUs following verification that the EPA-approved dredge design depths were achieved and the placement of initial and interim backfill material as soon as practicable in order to maintain compliance with the EPA-required dredging BMPs. This coordination, oversight and review process was developed to ensure the work was performed in accordance with the EPA-approved Documents and for EMJ to obtain any EPA feedback and concerns if that was not the case. It is inconsistent for EPA to now assert that the sequencing of the backfill work and z-layer sampling was a "significant oversight" by EMJ.

EPA also never required EMJ to submit the z-layer sediment sampling results to EPA or perform expedited analyses to ensure the results were below the RvAL prior to placement of backfill. Indeed, EPA did not request this because it was not part, nor a requirement of, the EPA-approved Documents for the NTCRA. If EPA believes based on their review of the Action Memorandum that this was a requirement for the NTCRA, expedited submittal of the z-layer sediment sampling results and EPA review and approval of these results prior to placement of clean backfill should have been a fundamental requirement during the construction implementation and a key concern raised by EPA and USACE during their construction oversight.

EMJ is disappointed by the content and the statements made in the EPA Letter regarding performance of the NTCRA. EMJ's position is that (1) it is in full compliance with all requirements of the Settlement Agreement and Action Memorandum and (2) no further evaluation or other work is required (except previously approved long-term monitoring and related requirements). EMJ requests that the initial "Negotiation Period" under Section XVI of the Settlement Agreement be extended until February 2, 2015, so that EMJ and EPA can discuss

EPA's concerns and the complicated technical issues at play and collaboratively establish a path forward toward resolution. Please contact me as soon as possible to discuss next steps.

Very truly yours,

JOYCE ZIKER PARKINSON, PLLC

Ian Sutton

cc: Rebecca Chu
Gil Leon
Miles Dyer
Maureen Sanchez, Washington Department of Ecology

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